

Court No. - 27

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 11626 of 2023

Applicant :- Punu Alias Pradeep Kumar

Opposite Party :- State Of U.P. Thru. Secy. Home Deptt. U.P. Govt. Lko. And Others

Counsel for Applicant :- Anil Kumar Awasthi

Counsel for Opposite Party :- G.A., Ram Asarey Verma

Hon'ble Brij Raj Singh,J.

1. Heard Shri Anil Kumar Awasthi, learned counsel for the applicant, Shri G.D. Bhatt, learned AGA-I for the State and Shri Ram Asarey Verma, learned counsel for the complainant and perused the record.

2. The present bail application has been filed by the applicant with a prayer to enlarge him on bail in Case Crime No.169 of 2023, under Sections 363, 366, 376 504 IPC., and 3/4 POCSO Act, Police Station Dhaurahra, District Lakhimpur Kheri.

3. Learned counsel for the applicant has invited attention of this Court towards the statement of the prosecutrix recorded under Section 164 Cr.P.C. in which she has deposed before the court that at 2 o'clock in the night of 21.03.2023, she had gone along with applicant to Lucknow without informing her family members. She deposed that she performed marriage with the applicant in a temple and remained there with the applicant in Lucknow for six days. When she came to know that case has been registered then she came back. She deposed that physical relation was established because she was enticed away and taken into confidence by the applicant.

4. Learned counsel has submitted that as per the medical report, the age of the prosecutrix is between 15-17 years and it does not support the prosecution story. He submitted that it is a case of consent and not a case of rape as such benefit of upper age limit of two years may be extended and it may be inferred that the prosecutrix was major at the relevant time. The applicant has no criminal history and is languishing in jail since 27.03.2023.

5. Learned AGA as well as learned counsel for the complainant has opposed the prayer for bail and submitted that prosecutrix was minor at the time of incident therefore, consent given by her has no meaning and the case is coming under the purview of rape and the bail of the applicant is liable to be rejected.

6. After hearing learned counsel for the parties and looking to the over all facts and circumstances of the case, considering the argument that it is a case of consent ;

argument that medical report does not support the prosecution case, argument that two years benefit of upper age limit may be extended and it may be inferred that the prosecutrix was major at the relevant time, thus, in my opinion, I find it to be a fit case for bail.

7. Let the applicant, **Punu @ Pradeep Kumar** be released on bail in the above case crime number on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of Court concerned with the following conditions :-

(i) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the applicant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

8. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The Trial Court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything in this order.

Order Date :- 24.11.2023

Pks